IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

VERSUS TECHNOLOGY, INC.,	)	
	)	
Plaintiff,	)	
	)	**Civil Action No. 04-1231 (SLR)**
v.	)	
	)	
RADIANSE, INC.,	)	
	)	
Defendant.	)	
	)	

REPLY IN SUPPORT OF VERSUS'S MOTION TO STRIKE
RADIANSE REPLY BRIEF OR FOR LEAVE TO FILE A SURREPLY

Plaintiff Versus Technology, Inc. ("Versus") submits this reply is support of its motion (D.I. 95) to strike the Reply (D.I. 94) filed by Defendant Radianse, Inc. ("Radianse") in association with its consolidated motion to dismiss (D.I. 78), for lack of standing, Versus's infringement claims with respect to U.S. Patents 5,572,195 ("'195 patent") and RE 36,791 ("'791 patent"); or in the alternative, for leave to file a surreply.

In its opposition brief (D.I. 99) to the present motion to strike, Radianse asserts that its last minute insertion of arguments based on discovery from Alan C. Heller is permissible because "Versus was the first to raise the subject of the Heller documents and deposition testimony (Opp. Br. At 8)." (D.I. 99, p.1). However, the truth is that Versus's opposition brief referenced only the occurrence, not the substance of the Heller deposition. In fact the occurrence of this discovery was only referenced to demonstrate the conformance of this case to the circumstances before the Federal Circuit in *In Mentor H/S, Inc. v. Medical Device Alliance, Inc.*, 244 F.3d 1365 (Fed.Cir. 2001). There, the Federal

Circuit recognized that the collection of discovery by defendants from the patent licensor was a factor that weighed against dismissal for lack of jurisdiction. *In Mentor H/S, Inc.*, 244 F.3d at 1373 ("we are not persuaded by defendants arguments that we should dismiss this case for lack of jurisdiction, . . . [where] the defendants did conduct discovery on [the licensor's] principals. . . ."). A reference to the occurrence of such discovery under these circumstances is hardly sufficient to "open the door" to Radianse's mischaracterization of the substance of this discovery in its Reply brief.

Radianse's latest brief also attempts to distort the quoted testimony from Mr. Heller. Radianse argues that, according to Mr. Heller, Versus did not acquire any rights to "dual use technology" under the PTFM License. (D.I. 99, p. 3). Not only is this not an accurate account of Mr. Heller's testimony, it is contrary to the express language of the PTFM License:

> The parties acknowledge and agree that ***the Licensed Rights and Assigned Rights may include*** certain software, hardware, patents and trade secrets that can be used in both infrared and non-infrared based applications, (hereinafter ***"Dual Use Technology"***).

(D.I. 79, Ex. 2, p. 2).

In view of the foregoing, Versus respectfully requests that the Court strike sections A and B of Radianse's Reply (D.I. 94), or in the alternative, grant Versus leave to file the surreply, attached as Exhibit 1 to Versus's Motion (D.I. 95).

Respectfully Submitted,

DATED: August 11, 2005

/s/ James M. Lennon

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UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

CERTIFICATE OF SERVICE

I hereby certify that on August 11, 2005, I electronically filed this REPLY IN SUPPORT OF VERSUS'S MOTION TO STRIKE RADIANSE REPLY BRIEF OR FOR LEAVE TO FILE A SURREPLY with the Clerk of the Court using CM/ECF which will send electronic notification of such filing to the following, who is also ***SERVED BY HAND*** on this date:

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